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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

In re LUMINENT MORTGAGE CAPITAL,)
INC., SECURITIES LITIGATION,)

CASE NO. 07-CV-04073 PJH

CLASS ACTION

This Document Relates To:
ALL ACTIONS.

**WILLIAM F. KORNFELD, JR.'S REPLY
MEMORANDUM IN SUPPORT OF HIS
MOTION FOR APPOINTMENT OF
LEAD PLAINTIFF AND LEAD
COUNSEL**

DATE: November 21, 2007
TIME: 9:00 a.m.
JUDGE: Honorable Phyllis J. Hamilton
CTRM: 3, 17th Floor

1 Proposed Lead Plaintiff William F. Kornfeld, Jr. (hereinafter "Kornfeld") hereby submits
 2 this reply memorandum in support of his motion for appointment of lead plaintiff and lead counsel,
 3 and in reply to Southern's Opposition to Certain Plaintiffs' Motions for Appointment as Lead
 4 Plaintiff and Approval of its [sic] Selection of Lead Counsel ("Southern's Opposition").¹ For the
 5 reasons outlined below, and in his moving and opposition papers, Mr. Kornfeld respectfully requests
 6 this Court appoint him Lead Plaintiff and appoint his selection of counsel as Co-Lead Counsel for
 7 the putative plaintiff Class.

8 **I. ARGUMENT**

9 Mr. Kornfeld is the lead plaintiff applicant with the largest interest in this litigation, who
 10 also meets the qualifications to serve as lead plaintiff.² Indeed, of the six pending lead plaintiff
 11 applications, only Southern to filed an Opposition to Mr. Kornfeld's Motion. However, contrary to
 12 Southern's Opposition, Mr. Kornfeld is the individual investor with the largest losses who also
 13 satisfies the requirements of Rule 23 because Southern Improvement may be subject to unique
 14 defenses and therefore lacks typicality. *See In re Cavanaugh*, 306 F.3d 726, 729-30 (9th Cir. 2002),
 15 citing 15 U.S.C. §78u-4(a)(3)(B)(iii)(I). Moreover, unlike Southern's selected counsel, Mr.
 16 Kornfeld's selected proposed lead counsel has no conflicts with their client, as further discussed
 17 below. Accordingly, Mr. Kornfeld should be appointed lead plaintiff and his selected counsel
 18 should be appointed lead counsel.

19 As outlined in Mr. Kornfeld's Opposition, Southern is atypical because, according to the
 20 certification submitted on behalf of Southern Improvement, Southern Improvement sold certain
 21

22 ¹ In addition to Mr. Kornfeld, motions for appointment of lead plaintiff and lead counsel
 23 were also filed by (i) Southern Improvement Company ("Southern Improvement"), Allen Dayton
 24 and VSA, Inc. ("VSA") (collectively referring to themselves as "Southern" in their Opposition
 25 papers); (ii) Joel Sharenow, Bradley Burns and Rajivi Kumar Prasad; (iii) State-Boston Retirement
 26 System and Norfolk County Retirement System; (iv) Ronald Larson; and (v) District No. 9,
 27 International Association of Machinists & Aerospace Workers Pension Trust ("District No.9").
 28 District No. 9 withdrew its application for appointment of lead plaintiff/lead counsel on November
 6, 2007.

² While Southern purports to have the largest losses, for the reasons outlined herein,
 Southern should not be appointed lead plaintiff.

1 Luminent Mortgage Capital, Inc. (“Luminent”) call options. *See* Exhibit (“Exh.”) 1 to the
 2 Declaration of David C. Harrison in Support of Motion by Southern for Appointment as Lead
 3 Plaintiff and Approval of Their Selection of Lead Counsel (“Harrison Decl.”).³ As outlined in Mr.
 4 Kornfeld’s Opposition, Southern Improvement’s selling of those call options during the Class
 5 Period was a form of hedging against a decline in the price of Luminent’s stock price. These
 6 hedging activities make Southern Improvement an atypical proposed lead plaintiff applicant because
 7 it calls into question Southern Improvement’s ability to adequately represent the interests of a class
 8 of investors. *See Camden Asset Mgmt., L.P. v. Sunbeam Corp.*, 2001 U.S. Dist. LEXIS 11022 at
 9 *48 (S.D. Fl. 2001); *Silverstein v. Digital Equipment Corp.*, 1990 U.S. Dist. LEXIS 6333 (D. Mass.
 10 1990). To address these issues more completely, Mr. Kornfeld requested relevant documentation
 11 from Southern, a request which Southern refused. *See* Bishop Declaration in Support of William F.
 12 Kornfeld, Jr.’s Opposition to Competing Motions for Appointment of Lead Plaintiff and Lead
 13 Counsel Exhs. 1 and 2.

14 In addition, a conflict exists between Southern Improvement, the proposed Class and
 15 Southern Improvement’s proposed lead counsel, Lowey Dannenberg Bemporad Selinger & Cohen,
 16 P.C. According to Southern Improvement’s certification, Southern Improvement adopted the
 17 allegations contained in the complaint filed in *Metzger v. Luminent Mortgage, Inc., et al.*, 07-CV-
 18 4686 (PJH). *See* Harrison Decl. Exh. 1 at ¶3. According to the *Metzger* Complaint for Violations
 19 of the Securities Laws, filed on September 11, 2007, *Metzger* “is a securities fraud class action on
 20 behalf of all purchasers of publicly traded securities of Luminent between October 10, 2006 and
 21 August 6, 2007, inclusive (the “Class Period”), against Luminent and certain of its officers and
 22 directors for violations of the Securities Exchange Act of 1934 (“1934 Act”). *See Metzger v.*
 23 *Luminent, et al.*, N.D. Cal. Case No. C 07-04686 (PJH) [now consolidated into this consolidated
 24 action], Docket No. 1, ¶1 at 1:10-13.

25
 26
 27 ³ In a chart annexed to Southern Improvement’s Certification, signed by Allen Dayton on
 28 October 5, 2007, Dayton, through Southern Improvement, repeatedly sold “Call” Options between
 June 26, 2007 through August 3, 2007.

If, however, this Court is not prepared to deny Southern's application in its entirety, contrary to Southern's Opposition, this Court should permit discovery into Southern's trading activity. *See* Southern Opposition, n.15 at 10:24-27; *see also Brown v. Biogen IDEC, Inc.*, 2005 U.S. Dist. LEXIS 19350 at *6 (D. Mass. 2005) (ordering discovery of a proposed lead plaintiff) (citing 15 U.S.C. § 78u-4(a) (3) (B)). Moreover, this Court should allow discovery assuring that Southern understands that its counsel has abandoned certain of its claimed losses because those losses are outside the Class Period definition.

⁴ Tellingly, the seller of a put option is generally damaged after the Class Period when the stock price has decreased and the holder of the note calls for the put option seller to make good on their contract. *See, e.g.*, Harrison Decl. Exh. 1, page 37 of 95.

⁵ In addition, none of the class period definitions included in the other complaints filed against Luminent and consolidated into this action includes the sale of put options. Order Consolidated Cases, N.D. Cal. Case No. 07-04073 (PJH), Docket No. 51, filed October 10, 2007.

1 **II. CONCLUSION**

2 For all the foregoing reasons, Mr. Kornfeld respectfully renews his request that this Court
3 appoint him as Lead Plaintiff pursuant to Section 21D(a)(3)(B) of the 1934 Act, and approve his
4 choice of Stull, Stull & Brody and Abraham, Fruchter & Twersky, LLP as Co-Lead Counsel for the
5 Class pursuant to Section 21D(a)(3)(B)(v) of the 1934 Act.⁶

6 Dated: November 7, 2007

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8
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Lead Counsel for the Class

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27 ⁶ If this Court is inclined to grant the application of any other proposed lead plaintiff over
28 Mr. Kornfeld, Mr. Kornfeld respectfully requests this Court reconsider his application if that lead
plaintiff becomes unable to fulfill its duties on behalf of the purported Class.

PROOF OF SERVICE VIA ELECTRONIC DELIVERY

I, Patrice L. Bishop, hereby certify that on November 7, 2007, I electronically filed the following document(s) with the Clerk of the Court using the CM/ECF system:

WILLIAM F. KORNFELD, JR.'S REPLY MEMORANDUM IN SUPPORT OF HIS MOTION FOR APPOINTMENT OF LEAD PLAINTIFF AND LEAD COUNSEL

Upon filing of the foregoing documents, the CM/ECF system sent notification of same to the e-mail address(es) denoted below, obtained through the CM/ECF system.

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I further certify that I served a copy(ies) of the above document(s) on the following non-CM/ECF participant(s) by depositing a copy(ies) in the United States mail, first-class postage prepaid, as follows:

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12 **Counsel for Plaintiff Howard J. Kaplowitz,**
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13 **Dennis Koch**

14 I further declare, pursuant to Civil L.R. 23-2, that on the date hereof I served a copy of the
15 above-listed document(s) on the Securities Class Action Clearinghouse by electronic mail through
the following electronic mail address provided by the Securities Class Action Clearinghouse:

16 scac@law.stanford.edu

17 I declare under penalty of perjury under the laws of the State of California and the United
States of America that the foregoing is true and correct. Executed this 7th day of November, 2007
18 at Los Angeles, California.

19 _____
/s/
20 Patrice L. Bishop
Declarant
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